

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
PUBLIC NOTICE
NOTICE OF FINAL AMENDMENT TO AIR QUALITY STATE IMPLEMENTATION PLAN**

Statutory Authority: S.C. Code Section 48-1-10, *et seq.*

Synopsis:

Pursuant to Section 176(c) of the Federal Clean Air Act Amendments (CAAA), the Department has revised the State Implementation Plan (SIP) to meet the obligations of the “Transportation Conformity Rule Amendments for the New PM_{2.5} National Ambient Air Quality Standard: PM_{2.5} Precursors,” and the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).”

On September 27, 1996, a Memorandum of Agreement (MOA), negotiated between the Department and the South Carolina Department of Transportation (SC DOT), was published in the *South Carolina State Register*. The purpose of the MOA was to formally incorporate the applicable provisions of the transportation conformity review process in accordance with the requirements of the CAAA, as promulgated by the United States Environmental Protection Agency (EPA) on November 24, 1993 (58 FR 62188), in 40 CFR Part 51, Subpart T, and as amended August 7, 1995 (60 FR 40098), and November 14, 1995 (60 FR 57179). Under those authorities, no department, agency, or instrumentality of the Federal government or a State government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity that does not conform to the SIP. The transportation conformity rule requires Federal and State agencies to determine, prior to taking any action on transportation plans, programs, and projects, that such action will conform to a SIP to maintain the National Ambient Air Quality Standards (NAAQS). The transportation conformity regulation applies only to areas that are designated nonattainment or maintenance for any of the applicable criteria pollutants (ozone, carbon monoxide, small particulate matter, or nitrogen dioxide).

On August 15, 1997 (62 FR 43780), April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808), the EPA promulgated amendments to the transportation conformity rule to streamline and clarify the criteria and procedures for determining the conformity of transportation plans, programs, and projects. The State was required by 40 CFR Part 51, Subpart T, Section 51.390 to amend the SIP by specifically removing any previously-applicable implementation plan transportation conformity requirements and submitting a revision to the SIP that addresses all requirements of 40 CFR Part 93, Subpart A. A Notice of General Public Interest was initially published in the *South Carolina State Register* on August 25, 2000, and was revised on August 22, 2003. A staff-conducted public hearing was held on the proposed revision on September 22, 2003. The SIP amendment was submitted to the EPA for final approval on November 19, 2003. The EPA published the approval of the revision in the *Federal Register* (69 FR 4245) on January 29, 2004.

In accordance with these requirements and as part of the 2004 SIP amendment, the Department incorporated into the SIP a new MOA to implement Section 176 of the CAAA, as amended (42 U.S.C. 7401, *et seq.*), the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR Part 93, Subpart A. The parties to this MOA are as follows: each of the Metropolitan Planning Organizations (MPO) as described in Exhibit 1, the Department, SC DOT, Federal Highway Administration - South Carolina Division Office (FHWA), the Federal Transit Administration (FTA), the EPA Region 4 (EPA Region 4), and local publicly-owned transit agencies not represented by aforementioned MPOs. Exhibit 2 of the MOA is the “South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects,” which provides for interagency consultation, resolution of conflicts, and public consultation procedures. The parties to this

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MOA agreed to conduct transportation conformity determinations in accordance with the provisions of 40 CFR Part 93, Subpart A as listed in Exhibit 3 of the MOA.

On May 6, 2005, the EPA promulgated a final rule entitled, “Transportation Conformity Rule Amendments for the New PM_{2.5} National Ambient Air Quality Standard: PM_{2.5} Precursors” (70 FR 24280). This final rule specified the transportation-related PM_{2.5} precursors and when they would apply in transportation conformity determinations in PM_{2.5} nonattainment and maintenance areas. The Department is required by 40 CFR Part 51, Subpart T, Section 51.390 to amend the SIP by specifically incorporating several requirements from the Federal Transportation Conformity Rule that address the consultation process, as well as establish that SIPs must include written commitments of mitigation measures.

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)” was signed into law. SAFETEA-LU amended the CAAA by: changing the required frequency of transportation conformity determinations from three years to four years; providing two years to determine conformity after new SIP motor vehicle emissions budgets are either found adequate, approved, or promulgated; adding a one-year grace period before the consequences of a conformity lapse apply; providing for an option for reducing the time period addressed by conformity determinations; streamlining requirements for conformity SIPs; and providing procedures for areas to use in substituting or adding transportation control measures (TCMs) to approved SIPs. SAFETEA-LU section 6011(g) requires that the EPA revise the transportation conformity rule as necessary to address these changes by August 10, 2007. On May 2, 2007, the EPA proposed changes to the transportation conformity rule to make it consistent with the CAAA as amended by SAFETEA-LU. The Department is required by 40 CFR Part 51, Subpart T, Section 51.390 to amend the SIP by specifically incorporating several requirements from the Federal Transportation Conformity Rule that address the aforementioned changes.

On November 1, 2007, the Department held a stakeholder meeting of the interagency partners in order to seek their input on the proposed revisions to the South Carolina Transportation Conformity SIP and MOA. Several comments were received, and those deemed significant by the Department were used to modify the SIP and MOA.

On January 24, 2008, the EPA again promulgated amendments to the Transportation Conformity Regulations (73 FR 4420). These amendments are necessary to make the final rule consistent with the CAAA Section 176(c) as amended by SAFETEA-LU, including changes to the regulations to reflect that the CAAA now provides more time for state and local governments to meet conformity requirements, provides a one-year grace period before the consequences of not meeting certain conformity requirements apply, allows the option of shortening the timeframe of conformity determinations, and streamlines other provisions.

The Department published a notice of intent to amend the SIP and an announcement of a 30-day comment period and public hearing in the *South Carolina State Register* on March 28, 2008. On the same day, a prehearing package was submitted to the EPA Region 4. At the conclusion of the public comment period, a public hearing was held on April 28, 2008. Written comments were received from the EPA Region 4 and those deemed significant were used to modify the SIP and MOA. No additional comments from the public were received. During the months of May, June, and July the majority of the necessary signatures for the MOA were obtained; with the final signature received on September 26, 2008. This final Amendment to the SIP takes effect upon publication of this Notice in the *South Carolina State Register* on November 28, 2008. The Department will submit a Notice of Final SIP Amendment to the EPA.